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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-B204
Washington, DC 20554

Re: WC Docket No. 04-36
CC Docket No. 01-92
CC Docket No. 96-45

Dear Madam Secretary:

In accordance with Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, we hereby provide you with notice of an oral *ex parte* presentation in connection with the above-captioned proceedings.

On Thursday, May 5, 2005, Scott Bergs, Sean Simpson and undersigned counsel, on behalf of Midwest Wireless Communications, L.L.C. ("Midwest") met with Lisa Gelb, Tamara Preiss, Jane Jackson, Jeremy Marcus, Victoria Goldberg, Steve Morris, and Randy Clarke in the Wireline Competition Bureau. No materials were distributed at the meeting.

We briefly discussed the technical difficulty that carriers providing Voice over Internet Protocol ("VOIP") services have in providing E-911 service. The main problem is a customer's ability to easily move VOIP equipment around the country and the likelihood that many customers will do so without notifying Midwest in advance. Without advance notification, Midwest cannot ensure that customers will have full E-911 access, or provide timely advice concerning the absence of E-911 service in some locations.

Midwest also urged the Commission to ensure that VOIP carriers have open access to selective routers nationwide, so as to enable customers to access E-911 services when they move VOIP equipment around the country. If the Commission does not mandate open access to selective routers, VOIP providers should be permitted to fulfill their E-911 obligation when equipment is moved by providing customers clear notice that, (1) their phone may not provide E-911 service when it is moved, (2) their 911 call may be routed to an administrative line at the PSAP, which is not the ordinary line on which 911 calls are received, and (3) as a result, the caller should first identify its location to the PSAP before describing the emergency.

Midwest also discussed the lack of a record in the proceeding to support a new requirement to provide E-911 service. There are many technical issues outstanding which could best be resolved through, for example, Commission-sponsored workshops or a rulemaking proceeding. Such fora would encourage all carriers to participate and potentially expedite resolution of technical issues and necessary intercarrier coordination.

We also discussed the Commission's intercarrier compensation proceeding. Midwest endorses a move to bill-and-keep, in part because the 1996 Act mandates that all universal service support be made explicit. Some nine years after the Act, the task of removing all universal service support from rates is not yet completed. Midwest urged the Commission to not maintain universal service support within rates as part of its new intercarrier compensation rules.

Moving support from carrier rates to an explicit system has caused the universal service fund to grow, as expected. The result has been positive because the system is becoming more transparent – that is – customers can more easily understand what they are paying for in local service, long distance service, bundled services, and universal service subsidies. Ultimately, a universal service fund that provides true portability will enable all carriers to compete on price and services, with the winner also gaining universal service support when it serves customers in high-cost areas.

Midwest also urged the Commission to move all carriers to a forward-looking cost model for both intercarrier compensation and universal service. The many 'average schedule' companies do not report their costs and there is no effective means for regulators to derive efficiencies from this carrier class. A forward-looking model, which is based on an efficient network, combined with the introduction of competitive ETCs, will lower support to all carriers over the long run as well as enabling competitive forces to deliver efficiencies that the regulators cannot.

Midwest noted that a forward-looking cost model is being used in the areas served by non-rural carriers. Many of these areas, such as Mississippi, West Virginia, Maine and Vermont, are very rural in nature and have diverse geographic and demographic characteristics. Yet the system is working and there is no reason why a rural cost model cannot be completed, building on the work done by the Rural Task Force before 2001 and the experience of non-rural carriers since. The combination of embedded costs and rate of return regulation has caused the fund to increase dramatically for rural ILECs over the past several years despite the fact that ILEC networks are mature and funds cannot be used for DSL deployments. If fund growth is a problem, the solution lies in resolving how to properly fund of those who draw over 90% of the support.

Midwest cited two examples from its experience that illustrate the problems with the current mechanism. First, virtually every rural ILEC operates its own switch, despite the fact that many serve relatively few access lines (some under 100) and the fact that there are alternatives. For example, there are many areas where rural ILECs are located near each other geographically, but they do not share switch capacity. If market forces were applied to these carriers, they would likely find alternatives to having multiple switches that have far more capacity than is necessary.

A second issue is the failure of the embedded cost methodology and average schedule system to drive investment by rural carriers. Many carriers have requested and received from state PUCs extensions of time to meet their obligation to provide intermodal local number portability ("LNP"). The most common reason given is the cost of upgrading antiquated switching equipment would not be a prudent expense in view of low demand for LNP. In one extreme case, an ILEC serving two non-contiguous service areas, with a total of 600 access lines, obtained an extension because providing LNP would require the purchase of ***two*** new switches, one for each wire center, at a cost of $250,000 each. It is inconceivable that any rationally operated business would invest in two switches to serve 600 access lines absent largesse from the universal service fund. With competition, it is possible, if not likely, that a better more efficient solution would be found to benefit consumers while conserving high-cost support.

Midwest also stated that the Commission's recent Report & Order (FCC 05-46) did not go far enough to target high-cost support out to the rural areas that need it most. At a time when conserving scarce high-cost support is a prominent topic, the Commission did nothing to more accurately target support to high-cost areas, which would accomplish two things. First, it would reduce the support flowing to competitive ETCs. Second, it would increase the per-line support available to competitors in truly high-cost areas, thus ensuring that a competitive ETC has the appropriate incentive to extend service out to high-cost areas where new wireless infrastructure is needed most.

If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,

David A. LaFuria

cc: Lisa Gelb
Tamara Preiss
Jeremy Marcus
Steve Morris
Randy Clarke
Jane Jackson
Victoria Goldberg